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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea from 23 May to 1 June 2016.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea*

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* Circulated in the language of submission only.

I. Introduction

1. Further to Human Rights Council resolutions 17/4 and 26/22, the Working Group is mandated to conduct country visits. Two members of the Working Group, Dante Pesce and Michael Addo, visited the Republic of Korea from 23 May to 1 June 2016, at the invitation of the Government. The visit aimed to assess the efforts made to prevent and address the adverse human rights impact of business-related activities, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.[1] The aim was also to support the efforts of the Government, business enterprises and other stakeholders to prevent business-related human rights abuses and strengthen protection against it; identify initiatives, opportunities and challenges in implementing the Guiding Principles; and examine the potential and actual human rights impact of business operations in the country. The visit was the Working Group's second to Asia and followed the 2016 Asia Regional Forum on Business and Human Rights.[2]

2. The experts met officials from the Office for Government Policy Coordination in the Prime Minister's Secretariat, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Strategy and Finance, the Ministry of Trade, Industry and Energy, the Ministry of Environment, the Ministry of Employment and Labor, the Korea Corporate Governance Service, the Small and Medium Business Administration, Daejeon metropolitan city and Ulsan metropolitan city. They also met representatives of the National Human Rights Commission and the Legislation and Judiciary Committee of the National Assembly, as well as representatives of civil society and victims groups, trade unions (Confederation of Trade Unions, Metal Workers Trade Union, Public and Transport Workers' Union, Union of the Seoul Metropolitan Rapid Transit Corporation, and Union of the Busan Transportation Corporation), and the United Nations Global Compact Network Korea. The experts met representatives of private businesses (POSCO Daewoo, Samsung Electronics, LG Electronics, Hyundai Motors, Hyundai Heavy Industry, and RB Korea (formerly Oxy Reckitt Benckiser) and State-owned enterprises (Electric Power Corporation, Railroad Corporation, Minting and Security Printing Corporation, and National Oil Corporation). They travelled to Seoul, Gwacheon, Daejeon, Sejong and Ulsan.

3. The Working Group is grateful to the Government for its invitation and its fulsome assistance. It also thanks the organizations, businesses, communities and individuals whom it met, and who facilitated site visits and meetings with stakeholders. It appreciated the informative discussions on the progress and challenges in the protection of human rights in the context of business activities.

4. The Working Group describes its findings and makes recommendations for actions that may assist in addressing and remedying the challenges identified.

II. General context

5. The Republic of Korea comprises nine provinces, six metropolitan cities, one special city and one special self-governing city. It has a population of approximately 50 million people.

6. Its economy is one of the world's largest. The Republic of Korea is a member of the Organization for Economic Cooperation and Development (OECD) and joined its Development Assistance Committee in 2010, thus becoming the first former aid recipient country to join as a donor. It is also a member of the Group of 20 and hosted the Group of 20 Summit in Seoul in November 2010.

[1] See A/HRC/17/31, annex.

[2] See www.ohchr.org/EN/Issues/Business/Pages/2016AsiaRegionalForum.aspx.

7. The Working Group's visit took place in the context of prior rapid industrial growth and a recent economic slowdown leading to rising unemployment. The Working Group heard about the concentration of economic power in a few large conglomerates, known as "chaebols" (e.g. Samsung, Hyundai, Lotte, LG, SK Group), increasing levels of overseas activities and investments by the country's public and private institutions and companies, and an increase in foreign aid to development cooperation projects abroad.

III. Legislative and policy framework

8. The Republic of Korea is a party to seven of the nine core international human rights treaties.[3] It has issued a standing invitation to the special procedures of the Human Rights Council. It is a member of the Human Rights Council and held the Presidency in 2016.

9. The country has ratified a total of 29 conventions of the International Labour Organization (ILO),[4] 27 of which are still in force and another 2 of which have been denounced. They include four of the eight core conventions, specifically the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No.182). The Republic of Korea has yet to ratify the remaining four, namely the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has ratified three of the four ILO governance conventions and 22 of its 177 technical conventions. The memorandum of understanding signed by the Ministry of Employment and Labor and ILO in 2003 led to the 2004 launch of a partnership programme to provide technical assistance to implement the ILO decent work agenda in Asia and the Pacific in particular areas that have been identified as ILO regional priorities.[5]

10. The governmental structure is determined by the Constitution, first adopted on 17 July 1948 and last amended by referendum on 29 October 1987. Power is divided among the executive, the judiciary and the legislature. The National Assembly has legislative authority. It is a unicameral legislature composed of 300 members serving four-year terms. Local governments are semi-autonomous and have their own executive and legislative bodies. The President of the Republic of Korea is elected by popular vote and leads the executive branch for a single five-year term. The President presides over a Cabinet that decides government policies. The Prime Minister is appointed by the President and approved by the National Assembly. The Prime Minister supervises the administrative ministries and manages the Office for Government Policy Coordination under the direction of the President. The Prime Minister may attend meetings of the National Assembly. The judiciary operates at national and local levels and consists of the Supreme Court, high courts, district courts, the Constitutional Court, the Patent Court, the Family Court, and administrative and local courts. The courts exercise jurisdiction over civil, criminal, administrative, electoral and other judicial matters.

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[3] It is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or to the International Convention for the Protection of All Persons from Enforced Disappearance. It has not signed or ratified: the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. During its universal periodic review in 2012, several recommendations highlighted the importance of ratifying these treaties. See A/HRC/22/10, paras. 124.1-124.2.

[4] See www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103123.

[5] These priorities are: competitiveness, productivity and jobs; labour market governance and social protection; and labour migration. See www.ilo.org/asia/WCMS_400160/lang--en/index.htm.

11. The Constitution is a key document relating to human rights in the Republic of Korea. For example, its article 10 states: "All citizens shall be assured of human dignity and worth and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals." Other relevant provisions prohibit "discrimination in political, economic, social or cultural life on account of sex, religion or social status" (art. 11 (1)), state that "standards of working conditions shall be determined by Act in such a way as to guarantee human dignity" (art. 32 (3)), and provide for the right to independent association, collective bargaining and collective action "to enhance working conditions" (art. 33 (1)). The National Human Rights Commission was established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[6]

IV. Awareness of business and human rights

12. Many government officials, State-owned enterprises and large businesses were aware of the Guiding Principles on Business and Human Rights. The Working Group encountered some State-owned enterprises and large businesses, and some government representatives, who were unaware of their duties and responsibilities under the Guiding Principles. The Working Group observed the need for greater coherence across the Government and noted a misunderstanding that the Guiding Principles may be relevant only to the Ministry of Justice, the Ministry of Trade and Industry, and the Ministry of Strategy and Finance. The Guiding Principles should be implemented across the Government and all companies should be aware of, and act in accordance with, their responsibilities outlined in the Guiding Principles. Many companies reported receiving little guidance from the Government on implementing them.

13. The Working Group observed a willingness within the Government and most businesses to study international best practice and improve policies and practices relating to business and human rights, and this commitment should be commended. The Working Group was encouraged to hear the Office for Government Policy Coordination in the Prime Minister's Secretariat state that the Government intended to provide guidance on business and human rights to companies, and facilitate a change in the culture of companies operating domestically and abroad. It looked forward to seeing concrete developments in this regard. It was also pleased to meet vibrant civil society actors who used the Guiding Principles.

14. The United Nations Global Compact Network Korea is active and emphasizes the Guiding Principles in its work. Its Leaders Summit 2015, "Business engagement for achieving sustainable development", demonstrated its interest in business and human rights. The Working Group heard about plans for corporate social responsibility forums for companies operating overseas.

15. The Working Group noted that the National Human Rights Commission had translated the Guiding Principles and the Working Group's guidance on national action plans on business and human rights into Korean, commenced research to establish a business and human rights road map and recommended to the Government that it should develop a national action plan on business and human rights. If the recommendation were to be adopted, that would make the country one of the first in Asia to do so. During the Working Group's visit, and in connection with the eleventh Jeju Forum for Peace and Prosperity, the National Human Rights Commission held a conference on the national action plan on business and human rights, which was attended by around 300 stakeholders from Government, business and civil society. The Working Group regarded that as positive, but heard concerns from some civil society organizations that they had not been invited.

[6] See General Assembly resolution 48/134, annex.

V. Issues in context

A. Allegations received

16. Although the Working Group was impressed with some of what it heard, civil society highlighted a large number of allegations of consumers, employees or subcontractors suffering due to the action, or inaction, of companies. These included the cases set out below.[7]

17. In the humidifier disinfectant case, it is alleged that 1,136 people died and 4,305 suffered ill health owing to exposure to hazardous chemicals found in humidifier sterilizers.[8] Since 2011, hundreds of mainly women and children have suffered from respiratory failure, acute pneumonia and other lung diseases as a result of using humidifier sterilizers manufactured and sold by several business entities, including Aekyung Co. Ltd., Costco Wholesale Korea, E-mart Co. Ltd., GS Retail Co. Ltd., Hanvit Chemical Co. Ltd., Home Plus Co. Ltd., Lotte Shopping Co. Ltd., Oxy Reckitt Benckiser, and SK Chemicals.[9] It is alleged that investigations carried out by the Government to identify victims were based on a classification scheme which resulted in identifying only a limited number of victims and potentially excluded victims eligible for financial support, health monitoring and other remedies. In response to this allegation, the Government informed the Working Group that it had introduced a system for potential victims who had not been found eligible for compensation to file objections. The case also concerned the lack of research into the health risks of inhaling a substance destined for domestic use, the lack of information about the risks associated with the product, and a company taking five years to accept responsibility. The National Human Rights Commission called for the Government and the companies concerned to acknowledge responsibility and provide remedies for victims. It also recommended that the Government should expand support for victims of the deadly humidifier sanitizer and improve the management system, including the assessment of the harmful impact of chemical materials to prevent recurrence of such tragedy. RB Korea (formerly Oxy Reckitt Benckiser) has issued an apology, accepting responsibility for the role that Oxy's humidifier sanitizing product played and the delay in providing an adequate remedy.[10] It has also set up a compensation plan.[11] The Working Group heard complaints that it was inadequate in scale and scope.

18. It is also alleged that workers at third-tier suppliers of Samsung Electronics and LG Electronics, namely YN Tech, BK Tech and Deogyong ENG, were diagnosed with acute optic nerve damage and toxic encephalopathy as a result of methanol poisoning at the workplace.[12] Allegedly, the exposure occurred during the cutting and moulding of aluminium parts for use in mobile phones, as workers were not provided with adequate health and safety training, information, ventilation or protection (gloves, eye masks and breathing masks), in violation of the Occupational Safety and Health Act (art. 5), and exposure could have been avoided, in part, by replacing methanol with ethanol.

19. At Samsung Electronics semiconductor and liquid crystal display factories, there were allegations of over 220 cases of worker illness and deaths, including from leukaemia, brain cancer and ovarian cancer.[13] The illnesses allegedly resulted from deficiencies in

[7] Some of these allegations were also addressed in a report by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/33/41/Add.1).

[8] Figures provided to the Working Group by the Government.

[9] See communication sent on 12 February 2016 by a number of special procedure mandate holders detailed in A/HRC/32/53.

[10] See www.rb.com/media/1674/rb-hy-2016-final.pdf, p. 9, and www.rb.com/media/news/2016/may/oxy-rb-and-humidifier-sterilizers-in-korea/.

[11] See www.rb.com/media/1801/4-fact-sheet-oxy-rb-korea-v5_jp-final-comments.pdf.

[12] See http://labourhealth.or.kr/42439, press statement.

[13] International Trade Union Confederation, "Samsung: modern tech, medieval conditions", pp. 13-14. Available from www.ituc-csi.org/IMG/pdf/samsung_web_en.pdf.

health and safety management and exposure to hazardous substances. Concerns related to a lack of information regarding the substances that victims were exposed to on the basis of trade secrets, a stalled negotiation between Samsung Electronics and the victims, and the use by the Korea Workers' Compensation and Welfare Service of a restricted definition of occupational diseases, which made it difficult to claim compensation.

90. Allegations of environmental damage and health effects in Dangjin[14] relate to the rapid overdevelopment of coal-fired thermal power plants and Hyundai steel mills causing excessive air pollution resulting in deaths, cancers and other health effects. The Working Group heard that Dangjin was now the highest carbon emitting city in the country and that its increase in the carbon emission rate was 9.5 times the national increase. Local residents alleged that they had not been consulted about the construction of additional thermal plants, whereas the Government stated that an environmental impact assessment, including discussions with local residents, had been carried out. Despite the presence of high levels of urinary arsenic, excessive levels of fine dust, toluene and benzene, there was limited restriction on the companies' operations.

91. Allegations have also been brought in the Seoul Central District Court concerning POSCO Daewoo's land purchase in Myanmar.[15] Twenty people from Myanmar are claiming compensation related to the Shwe gas project and the purchase of land by POSCO Daewoo in 2010 for its onshore gas terminal in Myanmar. POSCO Daewoo reportedly paid compensation to 120 households but the amount was claimed to be insufficient given the value of the land, and the subsequent environmental damage caused by contaminated water and industrial waste. It is alleged that the compensation agreement with the residents was influenced by a group of former high-ranking military officials who had de facto control over the land, that there was inadequate consultation with the communities living on the land, that the land confiscation led to forced displacement, and that there was no grievance mechanism and scrutiny of the project.

92. Allegations of forced eviction of residents living in Odisha, India, have been made following the granting by the Indian Government of concessions to the Pohang Iron and Steel Company for the construction of an integrated steel plant and a captive port. Concerns were raised that the project could force up to 20,000 people to leave their homes and land, without adequate safeguards and guarantees that their rights would be respected.[16]

93. There have also been allegations of child labour and forced labour in Uzbekistan[17] in the cotton linter pulp supply chain of the Korea Minting and Security Printing Corporation (KOMSCO). KOMSCO sources cotton linter pulp from Uzbekistan for use in banknotes and passports. In 2010 KOMSCO and Daewoo International established Global KOMSCO Daewoo in Uzbekistan to purchase cotton linter pulp. Concerns were raised about the alleged refusal by KOMSCO to monitor the cotton linter pulp supply chain, engage in supply chain management or conduct human rights due diligence following concerns about child labour and forced labour.[18] KOMSCO showed the Working Group its code of conduct on social and environmental standards, which prohibited child labour.

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[14] See http://media.peoplepower.org/Cargo/?VP3=SearchResult_VPage&STID=27MZIFJ6ITA9O.

[15] Lee Kyung-min, "Law students put more on POSCO Daewoo-Myanmarese dispute", *Korea Times*, 17 March 2016, and Earthrights International, "The Burma-China pipelines: human rights violations, applicable law, and revenue secrecy", Situation Briefer No 1, March 2011. Available from www.kwantoon.co.kr/news/news/2016/03/116_200611.html and www.earthrights.org/sites/default/files/documents/the-burma-china-pipelines.pdf, respectively.

[16] See "India: Urgent call to halt Odisha mega-steel project amid serious human rights concerns", press release issued by several special procedures mandate holders, 1 October 2013, available from http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E.

[17] See ILO, "Third Party Monitoring of the use of child labour and forced labour during the Uzbekistan 2015 Cotton Harvest" (November 2015). Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_427620.pdf.

[18] Kim Young-jin, "Ugly truth behind banknotes", *Korea Times*, 11 December 2013. Available from www.koreatimes.co.kr/www/common/printnews.asp?categoryCode=316&newsIdx=147819. The Cotton Campaign, "KOMSCO asked to stop using forced-labor cotton in Korean currency".

24. Allegations were made of trade union repression at Hyundai Motors' supplier, Yoosung Enterprise Ltd, in relation to industrial action (which led to the suspension of production of engine piston rings) taken by the Yoosung branch of the Korean Metal Workers' Union. Hyundai Motors denied any connection to the case and said it was not involved in, responsible for, or interested in the business affairs of its supplier. The Working Group heard about significant pressure that Hyundai Motors allegedly applied to trade union activists, resulting in the suicide of one activist on 17 March 2016.[19] It was also alleged that, despite trade union requests, the Ministry of Employment and Labor did not conduct special labour inspections at Yoosung.

25. Health and safety concerns were raised due to the serious, and fatal, injuries suffered by workers in the Ulsan shipbuilding industry, particularly workers in the third and fourth tier of the supply chain of Hyundai Heavy Industries.[20] Workers complained of workplace injuries being concealed or covered up by subcontracting companies, lack of recognition of the subcontracted workers' union and disadvantages when applying for industrial insurance. The Working Group heard about a surge in workplace-related fatalities, e.g. 3 in 2015 compared to 10 in 2016, according to the Government, or 14, according to the Hyundai Heavy Industries Workplace Injury Network.[21]

26. At the Seoul Metropolitan Rapid Transit Corporation and the Busan Transportation Corporation, workers alleged that engineers developed serious mental health issues leading to a number of suicides owing to adverse working conditions, such as the one-person-on-board system, oppressive management, lack of rest breaks, shortage of qualified engineers and excessive responsibility placed on one driver.

B. Protecting against abuse in supply chains

27. Key to the allegations of business-related human rights abuse in the present chapter is the apparent failure by lead companies to adequately oversee their supply chains and the lack of willingness to take effective responsibility for preventing, or mitigating, the human rights impact linked to their operations. Several of the cases implicating large companies relate to abusive working conditions endured by temporary workers employed by subcontractors, the outsourcing to subcontractors of operations with high human rights risks and the existence of "mul-yang teams" (hidden supply chain tiers of night-time workers).[22] The risk of human rights abuse tends to be higher lower down the supply chain, and particularly where supply chains extend overseas. A 2014 study undertaken by the National Human Rights Commission on the conditions of industries with a high risk of occupational injury found that many subcontracted workers experienced worse working conditions and received less safety information and training than directly employed workers.

28. The Ulsan shipyard operated by Hyundai Heavy Industries, mentioned above, demonstrates the issue. The shipyard employs around 55,000 workers, of whom about 29,000 work for subcontractors and 26,000 are employed by Hyundai Heavy Industries. In 2012, more than 60 per cent of production workers (exposed to high health and safety risks) were subcontractors;[23] a figure that has since risen to 80 per cent.[24] The shipyard has experienced an average of six fatal work accidents annually over the past 10 years with 71 per cent of those affecting subcontracted workers.[25] Of the seven workers that died in the

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14 June 2013. Available from www.cottoncampaign.org/harvest-2016/komsco-asked-to-stop-using-forced-labor-cotton-in-korean-currency.

[19] See www.industriall-union.org/hyundai-stop-union-busting-at-your-suppliers-1.

[20] See www.industriall-union.org/korean-unionists-alert-world-to-deaths-at-hyundai-shipyards.

[21] See https://unsafehhi.org/table-of-fatalties/.

[22] See http://laborhealth.or.kr/index.php?mid=journal&category=41072&document_srl=41187.

[23] See www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=c/wp6(2014)10/final&doclanguage=en page 19.

[24] See http://goodelectronics.org/publications-en/a-report-on-workplace-injuries-at-hhi.

[25] See www.industriall-union.org/sites/default/files/uploads/documents/2015/Korea/list_of_dead_hhi_workers.pdf.

first five months of 2016, the Government reported that three were subcontracted workers, while the Hyundai Heavy Industries Workplace Injury Network put the number of deceased subcontracted workers at five.[26] The In-house Subcontractor Workers' Union in Hyundai Heavy Industries accused the company of "risk outsourcing".[27] Hyundai Heavy Industries said the higher number of fatal accidents among subcontracted workers was because they were less experienced manual labourers (with an average of two years of experience), whereas directly employed workers were highly skilled (with an average of 18 years of experience).

29. Companies must take responsibility for respecting human rights across their supply chain and address adverse human rights impact in any part of their operations. According to the Working Group, "in principle, any business, wherever it is in the supply chain, can be involved with human rights abuses through causing, contributing to, or being directly linked to them as a result of its business relationships with other parties."[28] Guiding Principle 13 requires that companies "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

30. The Working Group heard about different approaches to human rights due diligence in supply chains. Some companies had integrated human rights due diligence into their operations and included respect for human rights as a condition in their contracts with suppliers.[29] Korea Railroad Corporation highlighted its commitment to human rights due diligence beyond the first tier of suppliers, citing the important role that trade union activity had played in shaping its culture. It reported on-site visits to monitor compliance of first-, second- and third-tier suppliers, and said that suppliers were obliged to notify it about new subcontracting arrangements. It said that a telephone hotline was available to workers of first-, second- and third-tier suppliers. The company was committed to its supply chain: "KR is implementing human rights management that respects the inalienable rights of not only KR's employees, but the employees of KR's business partners, customers, and the local residents".[30] However, other companies referred to their relationship with suppliers as one of dependence and trust. They indicated that it would be inappropriate for the lead company to impose its own policy on suppliers, so the first-tier supplier would merely be informed about the lead company's code of conduct and encouraged to follow certain standards. In the main, even when compliance with human rights standards was a mandatory requirement for suppliers, human rights due diligence by lead companies was limited to monitoring first-tier suppliers. They were then relied on to ensure that suppliers lower down the supply chain respected human rights and adhered to the lead company's code of conduct. Telephone hotlines used to report grievances and on-site inspections were mainly for direct employees of lead companies and not for workers further down the supply chain. Companies with human rights policies did not always acknowledge that their human rights responsibilities meant they needed to follow their impact, if necessary across the entire supply chain. For some companies a major reason for subcontracting was to outsource risk, for instance, stemming from poor workplace safety. Some companies argued that it was practically impossible for them to monitor their supply chains beyond their direct suppliers and Hyundai Motors indicated that reported human rights abuse implicating one of its direct suppliers was none of its business.

31. The Working Group also heard that article 18 (prohibition of unreasonable intervention in management) of the Fair Transactions in Subcontracting Act, according to which "the prime contractor shall not intervene in the management of the subcontractor by

[26] See https://unsafekhi.org/category/press-release/.

[27] See www.industriall-union.org/one-worker-a-month-dying-at-worlds-biggest-shipbuilder.

[28] A/71/291, para. 35.

[29] See, for instance, the Supplier Code of Conduct of Samsung Electronics, p. 4. Available from www.samsung.com/us/aboutsamsung/for_partners/downloads/samsung-supplier-code-of-conduct-guide-ver-2-2.pdf.

[30] Korea Rail Network Authority, *Sustainability Report 2016*, p. 55. Available from http://english.kr.or.kr/sub/info.do?m=0103.

means of regulating the quantity of the subcontract",[31] was being interpreted by some lead companies as restricting them from intervening beyond first-tier suppliers regarding possible supply chain problems. However, this provision restricts companies only from interfering with the management of subcontractors regarding the volume of goods; it does not restrict a lead company from addressing human rights issues in its supply chain. The Working Group urges relevant authorities to provide guidance on the legally compliant steps that lead companies can take in monitoring their supply chain, particularly in relation to health and safety issues.

32. Companies with complex supply chains should identify and prioritize areas with the greatest risk of negative human rights impact.[32] Companies should establish grievance mechanisms to enable adverse human rights impact to be identified. These should be available to all workers and individuals who may be adversely affected. Business operations with a high risk of industrial injury should insist on transparency, incentivize efforts by subcontractors to improve safety conditions. Lead companies should use their leverage to ensure that subcontracted workers have access to effective grievance mechanisms. The Government acknowledged the need for companies to protect against abuse in supply chains but more needs to be done to improve protection and bring supply chain relationships into line with international human rights standards.

C. Business-related human rights abuse outside the country

33. Some of the allegations detailed in the present chapter concern the overseas activities of companies based in the Republic of Korea, reflecting the fact that the business operations of these companies are increasingly transnational. The risk of companies being involved in human rights abuse abroad will be higher in countries with weaker regulatory frameworks.[33] The Working Group was concerned to hear that companies operating abroad did not give much attention to the heightened need for human rights due diligence in relation to overseas operations. Government and company representatives recognized that more work should be done in this area. Companies should develop mechanisms to allow grievances to be immediately brought to their attention to prevent harm from escalating. The Government of the Republic of Korea and its embassies should assist companies to identify, prevent and mitigate human rights risks related to overseas activities. While the Working Group heard some training had been delivered by the Embassy in Sri Lanka, the situation required the implementation of a comprehensive training programme. The Government and companies need to pay more attention to how companies operating overseas exercise human rights due diligence to avoid causing human rights harm. The Working Group emphasizes the importance of facilitating access to remedy in cases of human rights abuses related to companies' operations abroad. It is in the national interest to prevent companies from having adverse human rights impact abroad and address problems at the earliest opportunity.

VI. Economic actors

A. The State as an economic actor

34. The country has many State-owned enterprises which, like all companies, must avoid causing adverse human rights impact under the second pillar of the Guiding Principles. The State is expected, under the first pillar, to take additional steps to ensure that

[31] See https://elaw.klri.re.kr/eng_service/lawView.do?hseq=31928&lang=ENG.

[32] Guiding Principle 24.

[33] See J. Ruggie, "Making economic globalization work for all: achieving socially sustainable supply chains", address to G-20 Labour and Employment meeting, 15 February 2017. Available from www.shiftproject.org/media/resources/docs/Hamburg-Keynote-2017.pdf.

State-owned enterprises respect human rights in their operations.[34] The Working Group was pleased to hear that the Public Institutions Policy Bureau in the Ministry of Strategy and Finance organizes an annual evaluation, led by experts, to measure the performance of State-owned enterprises.[35] It was also pleased to learn about the *Guidelines for Human Rights Management and Checklist*, which the National Human Rights Commission issued to 117 public institutions, including State-owned enterprise.[36] However, some State-owned enterprises had little idea of what the Guiding Principles required and more should be done to highlight to State-owned enterprises the steps, such as human rights due diligence, they must take.

35. The National Pension Fund of the Republic of Korea is the third largest pension fund in the world with a fund reserve of 561 trillion won.[37] The National Pension Service Investment Management is an independent investment management committee whose purpose is to "preserve and grow" the Fund. The Fund is a signatory to the Principles for Responsible Investment[38] and therefore should incorporate environmental, social and corporate governance issues into its investment analysis and decision-making processes, and seek disclosure on these issues by the entities in which it invests. The Working Group learned that, while article 102 (4) of the National Pension Act[39] was inserted in 2015 to enable the Fund to take into account environmental, social and corporate governance factors in relation to investment targets to achieve long-term and stable revenue, there is no formal system to implement environmental, social and corporate governance due diligence by regularly monitoring these aspects of investments. As the Ministry of Health and Welfare has oversight of the Fund, it should provide guidance on this and monitor human rights due diligence across all the Fund's investments.

36. The Export-Import Bank of Korea (Eximbank),[40] appointed by the Ministry of Strategy and Finance as the executor of the Economic Development Cooperation Fund, appraises loan requests, concludes loan agreements, disburses loans and assesses economic aid projects in developing countries. The Working Group heard reports of an absence of human rights safeguards concerning projects for which loans had been made. In keeping with international best practice, all activities of Eximbank should be subject to human rights due diligence and safeguard processes. The Working Group heard that Eximbank had drafted safeguards in 2012 and started running pilot programmes in 2013, with a plan for the safeguards to come into operation in 2017, but that there had been no wide consultation. While the safeguards are vital, any pilot programme should be open to public scrutiny. The Working Group encourages Eximbank to consult with civil society before the safeguard development process is finalized. The safeguards should be based on international human rights standards such as the Guiding Principles, ILO labour standards and the Convention on the Rights of the Child, and take into account the Sustainable Development Goals and the OECD Guidelines for Multinational Enterprises.

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[34] Guiding Principle 4 clarifies that, as part of their duty to prevent and address adverse human rights impact arising from business activities, "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence."

[35] OECD and Korea Institute of Public Finance, "State-owned enterprises in Asia: national practices for performance evaluation and management, 2016", p. 48. Available from www.oecd.org/daf/ca/SOEs-Asia-Performance-Evaluation-Management.pdf.

[36] National Human Rights Commission, "NHRCK's Report on Business and Human Rights", press release, 29 April 2013. Available from www.humanrights.go.kr/site/program/board/basicboard/view?menuid=002002001&boardtypeid=7003&boardid=7001572.

[37] See http://fund.nps.or.kr/jsppage/fund/ifm_e/ifm_e_01.jsp.

[38] See www.unpri.org/about/the-six-principles.

[39] See http://elaw.klri.re.kr/eng_service/lawView.do?hseq=33644&lang=ENG.

[40] See www.koreaexim.go.kr/site/main/index002.

37. The Korea Exchange joined the Sustainable Stock Exchanges Initiative in 2015[41] and uses the Dow Jones Sustainability Index Korea.[42] RobecoSAM (one of the entities behind the Index) and the Korea Productivity Center evaluate non-financial elements of 200 companies listed on the Korea Exchange. The questionnaire sent to companies asks whether a company has a corporate human rights policy, conducts human rights due diligence, conducts an assessment of potential human rights issues across its own operations or value chain and publicly discloses progress on human rights issues to show how it is dealing with human rights issues.[43] The Working Group encourages this specificity and considers it appropriate for all listed companies to report in this way.

38. The Public Procurement Service handles public procurement. An amendment to the Government Procurement Act allows the Service to reflect social and environmental factors in procurement processes in order to promote corporate social responsibility. However, this is not mandatory and the Government should provide criteria for the evaluation of non-financial factors in public procurement bidding processes. It should also take steps to require disclosure of social and environmental factors during bidding processes so that performance in relation to those factors, not just cost, determines who wins a contract. This would help to promote policy coherence and incorporate human rights into public procurement.

B. Relationship between small and medium-sized enterprises and large companies

39. Despite there being a large number of small and medium-sized companies, a few large conglomerates dominate the economy. The power imbalance between the former and the latter is striking: 3.42 million small and medium-sized companies make up 99 per cent of all businesses and account for 88 per cent of employment. About half of the small and medium-sized companies supply large companies and chaebol-affiliated conglomerates. A common concern in discussions with the Government and civil society representatives was the asymmetrical relationship between large companies and their small and medium-sized suppliers, where the big companies were able to set conditions and pressure small and medium-sized companies competing for contracts to offer lower prices. The Working Group learned about the differences in working conditions, salary scales and benefits of employees of large companies compared to those available to many in the workforce of small and medium-sized companies.

40. Measures to protect small and medium-sized companies against unfair practices by large firms are in place, including the Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises (enacted in 2006 and most recently amended in 2016).[44] It aims to develop policies "to facilitate win-win cooperation between large enterprises and small-medium enterprises", including related to exchanges of technology and human resources and narrowing the salary gap between large enterprises and small and medium-sized companies (art. 2). To incentivize corporations to provide support to small and medium-sized companies, the Government has created the win-win cooperation index,[45] whereby large enterprises are assessed annually by independent evaluators led by the Ministry of Strategy and Finance and win awards for good practice. However, these initiatives do not explicitly include human rights due diligence. This should be addressed and criteria related to human rights should be added.

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[41] See www.sseinitiative.org/wp-content/uploads/2015/05/Korea-Stock-Exchange-KRX-Commitment-Letter_f.pdf.

[42] See www.sustainability-indices.com/index-family-overview/djsi-family-overview/index.jsp and http://us.spindices.com/indices/equity/dow-jones-sustainability-korea-index-krw.

[43] See www.sustainability-indices.com/images/RobecoSAM-Corporate-Sustainability-Assessment-Companion.pdf.

[44] See https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=30349.

[45] See www.winwingrowth.or.kr/index.do (in Korean only).

C. Non-financial reporting

41. All of the companies that the Working Group met prepared annual sustainability reports. Several reports included references to human rights, some more explicitly than others. Most of the companies the Working Group met indicated that they followed the Global Reporting Initiative G4 Guidelines,[46] which include human rights criteria and refer to the Guiding Principles. However, the reports generally did not go into detail about steps taken to identify risks, and prevent and remedy human rights harm. The Working Group encourages all companies to highlight these aspects in non-financial reporting. A key tool for reporting on compliance with the Guiding Principles is the framework developed through the Human Rights Reporting and Assurance Frameworks Initiative.[47] The Working Group suggests that the Government should establish non-financial reporting requirements on human rights due diligence processes in line with the Guiding Principles and existing reporting standards. The Government could also use existing mechanisms to promote the Guiding Principles and responsible business conduct, e.g. the Korean Business Ethics Index, an annual review by the Center for Sustainability Management and the Ministry of Commerce, Industry and Energy, which evaluates ethical management in large companies,[48] the above-mentioned win-win cooperation index and the above-mentioned National Human Rights Commission's *Guidelines for Human Rights Management and Checklist*, which could be sent to private companies.

VII. Specific issues

A. Labour rights

42. Health and safety in the workplace was said by government representatives[49] to have been a problem in relation to large companies and increasingly also to small and medium-sized ones. The Occupational Safety and Health Act,[50] which aims to "maintain and promote the safety and health of workers by preventing industrial accidents and creating [a] comfortable working environment through establishing standards on occupational safety and health and clarifying where the responsibility lies", imposes several requirements on employers regarding the provision of safe workplaces. However, the Working Group heard that oversight and enforcement of these requirements were an issue and more should be done to facilitate the reporting of workplace incidents so that they could be properly investigated and remediation and prevention measures put in place. There was a high burden of proof on those seeking compensation for industrial accidents, e.g. victims must provide evidence of the presence of a risk factor and evidence of a high level of exposure. Victims must satisfy the burden of proof in order to receive compensation from the Occupational National Insurance for injuries suffered from hazardous working conditions.[51] The Act on Liability for Environmental Damage and Relief Thereof[52] came into force on 1 January 2016 and lessens the burden of proof for some victims. This is positive, but there is more to do to fairly treat workers who find it hard to prove wrongdoing by an employer. OHSAS 18000,[53] an international occupational health and safety management system specification, provides that, regardless of the contractual arrangement, the company where a worker is working is responsible for his or her health and safety. The Working Group did not hear of companies using this system and considers that companies should do so.

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[46] See www.globalreporting.org/information/g4/Pages/default.aspx.

[47] This framework is referred to as the "UN Guiding Principles Reporting Framework". See www.ungpreporting.org/.

[48] See http://csm.ips.or.kr/site/sm_english/wedo/kobex_01.aspx.

[49] Particularly from the Ministry of Employment and Labor.

[50] See www.moel.go.kr/english/poli/poliLaw_view.jsp?idx=264&tab=7.

[51] See Occupational Safety and Health Industrial Accident Compensation Insurance Act, available from www.moel.go.kr/english/poli/poliLaw_view.jsp?idx=230&tab=7.

[52] See http://elaw.klri.re.kr/eng_service/lawView.do?hseq=34926&lang=ENG.

[53] See http://certificationeurope.com/ohsas-18001-occupational-health-and-safety-management/.

Likewise, the Working Group did not hear of the ILO Sustaining Competitive and Responsible Enterprises practical training and in-factory counselling programme[54] being used. It improves productivity and working conditions in small and medium-sized enterprises and the Working Group thinks it would be useful for them.

43. As mentioned above, two fundamental ILO conventions that the Republic of Korea has not ratified are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The International Trade Union Confederation index[55] on workers' rights ranked the Republic of Korea as one of the worst for workers (assigning it the lowest rating of 5, defined as a country that has no guarantee of rights). Amnesty International[56] and the International Trade Union Confederation[57] have highlighted workers being detained and restricted from protesting. The Working Group heard concerns surrounding these issues, especially regarding the freedom for trade unions to operate. It heard about: "yellow unions" set up by companies that did not meet the international standard for freedom of association and collective bargaining; one union being treated as the representative of all the unions operating in a particular context; termination of a subcontracting agreement following establishment of a trade union;[58] and companies suing the trade union of a supplier where industrial action had been taken and deducting wages from workers who went on strike to pay for lost profits incurred by industrial action. Workers should not have to meet the financial cost resulting from the legitimate defence of their employment rights. All companies should seek to understand the reasons for industrial action and adapt their management practices, rather than punishing protesters. The international standard for freedom of association and collective bargaining should be adhered to in all instances.

B. Migrant workers and those in an irregular situation

44. The Working Group learned that temporary migrant workers were particularly at risk of business-related human rights abuse. Elements of the Employment Permit System for migrant workers seemed to contribute to this. Through bilateral agreements with 15 countries in the region, migrant workers are invited to enter on an E-9 visa for three years. While they are allowed to change employer up to three times during that period, the Working Group learned that, as they had no guarantee of finding alternative employment, it was often difficult for migrant workers to leave an abusive employer.[59] The estimated 214,000 unregistered migrants, of whom an estimated 49,300 became unregistered migrants with expired E-9 visas, find themselves in an even more vulnerable situation. Although unregistered migrants are allowed to stay and are covered by labour laws while cases concerning abusive labour practice or non-payment of salary are being processed, they are particularly vulnerable to human rights abuse.

45. The 22 per cent of the workforce who are employed as temporary workers[60] are also in a vulnerable situation. They are on average paid 38 per cent less than regular workers,

[54] See www.ilo.org/empent/Projects/score/WCMS_321117/lang--en/index.htm.

[55] "ITUC Global Rights Index: The world's worst countries for workers, 2016", available from www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf.

[56] Amnesty International, "Stop arrest of trade union leaders and respect the rights of striking workers", 24 December 2013.

[57] International Trade Union Confederation, "Korea: Authorities targeting hundreds of trade unionists", 4 December 2015. Available from www.ituc-csi.org/korea-authorities-targeting.

[58] See www.tuacoecdmneguidelines.org/CaseDescription.asp?id=203.

[59] In 2015 during the 104th session of the International Labour Conference, the Conference Committee urged the Government to review and, if necessary, make adjustments to programmes to ensure appropriate protection of the foreign worker labour force. See www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3241944.

[60] OECD, *OECD Economic Surveys: Korea 2016* (Paris, May 2016), p. 42. Available from www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-korea-2016_eco_surveys-kor-2016-en#.WOyHJf7ovcs.

even if they have the same skills and perform similar work as regular workers.[61] As a 2016 OECD survey highlighted, the number of female workers in non-regular employment is particularly high: 40 per cent in 2015, compared to 26 per cent of men.[62] Several of the cases reported to the Working Group concerned temporary workers who had been assigned hazardous tasks without proper training. Lead companies must assume greater responsibility for the human rights risks facing workers across their supply chains.

C. Situation of women

46. The Working Group observed a significant absence of women at senior levels in companies. Statistics relating to the number of women at those levels were generally not available. The Ministry of Employment and Labor informed the Working Group that it was trying to deal with childcare issues as a means of addressing the low levels of women in leadership roles. The Working Group was struck that representatives of KOMSCO remarked that they "might address" the shortage of women at senior levels of the business "if the opportunity arose". Apart from the social and ethical issues raised, it does not make business sense to ignore half the workforce. The Working Group understands that women represent untapped labour and talent within the economy of the Republic of Korea. It heard that women left the labour force at a high rate when they married or had children and that highly educated women found it harder to find suitable employment than women with a lower standard of education, and found it difficult to re-enter the workforce after a career break. This finding echoes the Human Rights Committee's concluding observations on the country's fourth periodic report, which detailed concerns about "ongoing discrimination against women, including patriarchal attitudes and gender-based stereotypes concerning the role of women in the family and in society" and "the particularly small proportion of women in decision-making positions, the high rate of women in irregular employment and the markedly high wage gap between men and women".[63] The Committee recommended the development of "measures to eliminate existing patriarchal attitudes and gender stereotypes", intensification of "efforts to ensure equality between women and men in all spheres of both the private and public sectors, including through temporary special measures" and "measures to eliminate the gender wage gap, ensuring equal pay for work of equal value, including by promoting conditions to accommodate employees with families in regular employment, and eliminate discrimination in irregular employment".[64] The Working Group agrees that these recommendations should be implemented.

47. Furthermore, in October 2012 the Working Group on the Universal Periodic Review advised the country to: formulate a national strategy to promote gender equality so as to advance the status of women, combat violence and eliminate discrimination against women; take additional measures aimed at eliminating all forms of discrimination against women and at strengthening their situation and participation in all State institutions; and increase governmental efforts to ensure that women, in particular single mothers, can have access, as men do, without any discrimination, to employment, equal pay and matrimonial rights, especially following an inheritance or a divorce.[65] The Working Group on the issue of human rights and transnational corporations and other business enterprises supports these recommendations and looks forward to seeing how they have been implemented during the 2017 universal periodic review.

48. The Working Group notes that in 2015 only 17 per cent of the seats in the National Assembly were occupied by women.[66] It observes that the World Economic Forum's Global Gender Gap Report 2015[67] ranked the Republic of Korea at 115 (up two places from

[61] Ibid.
[62] Ibid., p. 47.
[63] See CCPR/C/KOR/CO/4, para. 16.
[64] See CCPR/C/KOR/CO/4, para. 17.
[65] See A/HRC/22/10, para. 124.26.
[66] See http://wdi.worldbank.org/table/1.5 and http://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=KP.
[67] See http://www3.weforum.org/docs/GGGR2015/cover.pdf.

2014, triggered by progress across indicators on economic participation and opportunity). It is concerned about the situation of women in the workplace. It heard that women routinely faced issues relating to unequal pay and noted that a 2014 report produced by the National Human Rights Commission showed that 17.4 per cent of female workers reportedly received wages that fell below the minimum wage and 28.5 per cent of full-time workers received compensation below minimum requirements.[68] Gender equality in business was emphasized by the United Nations Secretary-General in his address to the Leaders Summit 2015. He remarked "if you really want to see dynamic growth, put more women in charge. Forbes Magazine did a study showing that the more women in the boardroom, the better the profits."[69] The Working Group thinks all businesses should take gender equality seriously as the economy and society benefit from a balanced approach to gender representation.

VIII. Role of local government

49. While visiting the metropolitan cities of Daejeon and Ulsan, the Working Group learned about the concept of "human rights cities", in which human rights standards and norms guided local government, civil society and private sector organizations. It heard that the metropolitan city of Gwangju, in the south-east of the country, was a human rights city[70] and that Daejeon (the country's largest research and development centre) and Ulsan (the country's centre of industry and production) were both led by mayors committed to emphasizing human rights in policymaking. The Working Group heard plans for Daejeon to hold a week of human rights-focused cultural activities during December 2016. It also learned that the Daejeon metropolitan government had adopted ordinances in relation to health and safety at work, the right to demonstrate as part of trade union activities and a living wage. The Working Group was pleased to learn that the National Human Rights Commission had signed, in October 2015, a memorandum of understanding with the Daejeon Metropolitan Office of Education as part of a plan to create a school environment that respected human rights[71] and that, on 30 June 2016, it had signed a memorandum of understanding with Daejeon metropolitan city in which they "agreed to cooperate on joint research on human rights issues in Daejeon, jointly develop and utilize human rights education contents and make multifaceted efforts to protect [the] human rights of underprivilege[d] and vulnerable classes".[72]

50. The Working Group learned that Ulsan had 6 human rights policy objectives and 75 human rights-related projects grounded in: support for trade unions through a tripartite committee based on a multi-stakeholder approach; and safety in the workplace to prevent industrial accidents. City representatives acknowledged weaknesses in the Ulsan area, such as: weak protections for irregular, temporary and foreign workers, the absence (due to a lack of funding) of an industrial accident treatment centre in Ulsan and the lack of a regional labour committee to deal with unfair labour practices. The Working Group was encouraged by this self-awareness and willingness to admit imperfection and considered it a good basis for future progress.

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[68] Human Rights Monitor South Korea, "NHRCK Report reveals gender inequality in the workforce", 24 March 2014. Available from www.humanrightskorea.org/2014/nhrc-report-reveals-gender-inequality-workforce/.

[69] See www.un.org/sg/en/content/sg/statement/2015-05-19/secretary-general%E2%80%99s-remarks-global-compact-network-republic-korea.

[70] See www.hurights.or.jp/archives/focus/section2/2010/03/koreas-city-of-human-rights-gwangju.html and www.uclg-cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf.

[71] "NHRCK signed an MOU with the Daejeon Metropolitan Office of Education", 14 October 2015. Available from www.humanrights.go.kr/site/program/board/basicboard/view?&boardtypeid=7013&menuid=002002005&paesize=10&searchcategory=policy&boardid=7001771.

[72] "NHRCK Signed an MOU with Daejeon Metropolitan City", press release, 4 July 2016. Available from www.humanrights.go.kr/site/program/board/basicboard/view?menuid=002002001&pagesize=10&searchcategory=policy&boardtypeid=7003&boardid=7001815.

51. In relation to the Dangjin case concerning the overdevelopment of thermal power plants and steel mills, affected community members reported that local authorities were unaware of the Guiding Principles and that it was hard to engage with them regarding their concerns. They felt abandoned to a life in hazardous and polluted conditions to facilitate the provision of cheaper electricity to the rest of the country. The Working Group urges central and local governmental authorities to consider how to provide a safe living environment for the people affected and to engage with them to address the perception that they have been sacrificed in favour of rapid industrialization for others elsewhere. It encourages all local authorities to embed the Guiding Principles in their activities.

IX. Access to remedy

A. State-based judicial mechanisms

52. Guiding Principles 26 and 27 make it clear that access to effective judicial mechanisms is at the core of ensuring access to remedy. Judicial remedies should be accessible and effective. Alleged victims of business-related human rights impact are usually in a weaker position than those accused of causing the impact. Access to legal advice and information for alleged victims is essential and the position of victims should be balanced to enable them to be in an equal position vis-à-vis the Government and business. The courts should be available to all those claiming to have suffered harm and judges should be aware of the Guiding Principles. The Seoul Central District Court case concerning the activities of POSCO Daewoo International in Myanmar is important as it shows how remedy can be sought in a "home State" by victims who find it difficult to access remedy in a "host State".

B. State-based non-judicial grievance mechanisms

53. While courts and administrative tribunals remain key, non-judicial mechanisms are important in ensuring access to remedy, in accordance with Guiding Principle 28. National human rights institutions are often empowered to examine complaints. The Working Group considers that the National Human Rights Commission's mandate should be widened to enable it to consider all business-related human rights harm caused by State-owned enterprises and private enterprises, not just issues relating to discrimination, as is currently the case.[73] While the National Human Rights Commission received an "A" rating in May 2016,[74] there is room to improve its resources and strengthen its mandate.

54. The OECD national contact point[75] is vital to the resolution of business and human rights issues. As the national contact point system incorporates the Guiding Principles through the OECD Guidelines for Multinational Enterprises,[76] it is a grievance mechanism to deal with cases concerning the Guiding Principles. While the national contact point of the Republic of Korea has been reformed by including independent experts and representatives from the Ministry for Environment and the Ministry of Employment and Labor, more progress is needed. The national contact point must be impartial and be perceived as such. The composition and the location of the national contact point need to retain the confidence of all stakeholders, including civil society and trade unions. The Working Group heard that some stakeholders did not have full confidence in it because past cases had been dismissed, its composition did not reflect all stakeholders, and its location at the Commercial Arbitration Board gave some stakeholders the impression that it was close to business. The Working Group considers that the national contact point's human and financial resources could be increased and it could be located elsewhere or

[73] See National Human Rights Commission Act, art. 19, available from http://elaw.klri.re.kr/eng_service/lawView.do?hseq=32353&lang=ENG.

[74] See www.ohchr.org/Documents/Countries/NHRI/ChartStatusNHRIs.pdf.

[75] http://mneguidelines.oecd.org/ncps/.

[76] See chap. 4, available from www.oecd.org/corporate/mne/48004323.pdf.

restructured within its current location to develop its competence, independence and authority. According to the commentary on the implementation procedures of the OECD Guidelines, national contact points can establish multi-stakeholder advisory or oversight bodies to assist them in their tasks.[77] The Working Group suggests that a multi-stakeholder advisory group would help the national contact point engage with critical voices. The OECD Ministerial Council at its 2015 meeting (for which the Republic of Korea was a Vice-Chair) called for voluntary peer reviews and the exchange of best practices by national contact points.[78] OECD Watch has called for the number of national contact point reviews to be accelerated.[79] The Working Group suggests that a peer review would be useful as a stronger national contact point could raise awareness, address cases concerning overseas business activities and set expectations.

C. Non-State-based grievance mechanisms

55. The Working Group heard about different types of operational grievance mechanisms operated by companies, although the understanding of the value of non-State grievance mechanisms was varied. While operational grievance mechanisms are not meant to substitute for judicial mechanisms, they can play an important role in providing early access to remedy for individuals or communities that are adversely affected by a business enterprise. They can provide a vital means for a company to become aware of matters within its business that it would otherwise not know about. They should not be used to preclude access to judicial mechanisms or undermine the role of legitimate trade unions.[80] Effective grievance mechanisms should be established by all companies operating domestically and overseas, either alone or in collaboration with others. This includes developing whistle-blower programmes and complaints processes. Companies should want to know about any issues in their business and take timely steps to find fair solutions.

X. Strengthening the policy framework

56. The Working Group was pleased to hear that the Government took the implementation of the Guiding Principles seriously and that work was under way to promote and protect human rights in relation to business conduct. However, there is a need for improved coordination among government agencies, and multi-stakeholder dialogue involving the Government, business and civil society. The Working Group urges the Government to develop a national action plan on business and human rights. The Human Rights Council has encouraged all States to do so.[81] Such a process presents a valuable opportunity to strengthen coordination and policy coherence and would help the Government to: identify areas of risk; decide which laws, regulations, policies and oversight should be strengthened; and determine how to improve access to remedy through State-based and non-State-based grievance mechanisms.[82] The Working Group stresses the importance of involving government agencies that deal directly with public and private companies in the process, and all sections of society. A national action plan should be based on the Guiding Principles and use the Working Group's guidance,[83] which states that national action plans "need to be developed in inclusive and transparent processes. Relevant stakeholders need to be allowed to participate in the development, and update, of the [plan] and their views need to be taken into account. Information needs to be shared transparently at all stages of the process".[84]

[77] Ibid., p. 78.
[78] See www.oecd.org/mcm/documents/ministerial-council-statement-2015.htm.
[79] See www.oecdwatch.org/publications-en/Publication_4303/.
[80] See Guiding Principle 26.
[81] Resolution 26/22.
[82] Guiding Principles 25-31.
[83] See www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.
[84] See www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

57. There is no national public mechanism mandated to prepare reports to and engage with international and regional human rights mechanisms (including treaty bodies, universal periodic review and special procedures), or to coordinate and track follow-up and implementation. Instead there are ad hoc mechanisms created to respond to specific reports.[83] A national mechanism for reporting and follow-up would develop the existing framework and strengthen policy coherence.

58. Engagement by all stakeholders is important in the implementation of the Guiding Principles as a multi-stakeholder approach is key to sound policy formulation. An active civil society and open media promote transparency and accountability in business operations. The Working Group encourages these stakeholders to continue pressing for the implementation of the Guiding Principles.

XI. Conclusions and recommendations

A. Overall remarks

59. **The Working Group welcomes the Government's commitment to the Guiding Principles and the topic of business and human rights. It emphasizes the importance of moving from commitment to action and embedding the Guiding Principles in all commercial and business activities within the Republic of Korea and overseas, including throughout companies' supply chains. It noted broad challenges in: workplace safety; supply chain management; business culture and the impact on women; overseas business activities; and disadvantages for migrant workers.**

60. **The Working Group urges the Government to commence a national action plan on business and human rights process and facilitate fulsome multi-stakeholder dialogue. The Working Group stands ready to assist with the development of policy and legislation on the basis of best international practice so that the country can deliver on its ambition to lead the region on business and human rights, and makes the following recommendations.**

B. Recommendations to the Government

61. **Develop a national action plan on business and human rights based on multi-stakeholder engagement and the Working Group's guidance.**

62. **Raise awareness and build capacity for civil servants and lawmakers on the obligations and responsibilities of the Government and business enterprises, including State-owned enterprises, to prevent and address adverse business-related human rights impact, in line with the Guiding Principles.**

63. **Provide guidance to companies, in particular small and medium-sized enterprises, about the corporate responsibility to respect human rights.**

64. **Provide guidance on the steps that lead companies should take to ensure that human rights are respected throughout their activities.**

65. **Provide guidance concerning companies' overseas activities and regulate such activities.**

66. **Underline the expectation in relevant policies that business enterprises must respect human rights throughout their operations and conduct human rights due diligence in relation to their domestic and international operations.**

[83] See OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms* and *National Mechanisms for Reporting and Follow-up: A Study of State Engagement with International Human Rights Mechanisms* (HR/PUB/16/1 and Add.1).

67. **Enable open dialogue among the Government, business and civil society on business and human rights issues.**

68. **Strengthen the inclusion of the corporate responsibility to protect human rights in procurement in public procurement policies and contracts.**

69. **Require compliance with the Guiding Principles and the OECD Guidelines in relation to domestic and overseas activity, and highlight the good practice of those State-owned enterprises that comply.**

70. **Encourage Eximbank to implement safeguards against adverse human rights impact in relation to the projects it funds and consult with civil society about the safeguards.**

71. **Review access to remedy and suggest ways to strengthen judicial and non-judicial mechanisms to address business-related human rights harm.**[46]

72. **Ensure that people whose human rights may be negatively affected by business activities receive information, including legal advice, so they can defend their rights.**

73. **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

74. **Train lawyers and judges to improve their awareness of the Guiding Principles in cases concerning companies established in the Republic of Korea.**

75. **Establish a national mechanism for reporting and follow-up, as suggested by OHCHR.**[47]

76. **Increase the independence and visibility of the national contact point as well as its human and financial resources. Expand its scope to give it a clearer and more ambitious mandate.**

77. **Monitor effectively workplace violations of the Occupational Safety and Health Act and clarify to companies the health and safety standards they must adhere to, and take enforcement action against companies where appropriate.**

78. **Fund an industrial accident treatment centre in Ulsan.**

79. **Broaden the National Human Rights Commission's mandate to enable it to consider all human rights harm caused by private enterprises, not just discrimination issues.**

C. Recommendations to businesses

80. **Ensure that all levels of their organization (including policy and site/operation levels) know and implement the Guiding Principles, including in relation to the entire value chain and overseas activities.**

81. **Comply with the responsibility to respect human rights by adopting a human rights policy, and carrying out human rights due diligence to identify, prevent, mitigate and account for how adverse human rights impact is addressed.**

82. **Conduct meaningful consultations with all those actually or potentially affected by adverse human rights impact and provide timely and complete information about matters affecting them.**

83. **Address gender inequality in the workplace, and consider how human rights risks affect women, children and men differently.**

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[46] See A/HRC/32/19.

[47] See OHCHR, *National Mechanisms for Reporting and Follow-up: A Practical Guide to Effective State Engagement with International Human Rights Mechanisms*.

84. Address human rights risks facing migrant workers and persons with disabilities.

85. Develop and run operational grievance mechanisms, consistent with the effectiveness criteria in Guiding Principle 31, to identify and address adverse impact.

86. Participate in developing a national action plan on business and human rights.

87. Engage with the United Nations Global Compact Network Korea and business associations, to promote understanding of, and learn from, experiences of implementing the Guiding Principles.

88. Engage fully with civil society to listen to concerns and seek information about human rights risks and poor practices throughout the supply chain.

89. Create an environment in which victims can speak openly and obtain an appropriate remedy.

90. Better address workplace safety issues in accordance with existing health and safety standards.

D. Recommendations to civil society

91. Continue to raise awareness around the different obligations and responsibilities of the State and business enterprises under the Guiding Principles to prevent and address adverse human rights impact related to the operations of business enterprises.

92. Continue to raise the cases of victims and human rights defenders at the national and international levels.

93. Engage in a multi-stakeholder process to contribute to the development of a national action plan on business and human rights, and campaign for full participation of all stakeholders.